

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

**4 IN RE: VALSARTAN PRODUCTS  
LIABILITY LITIGATION**

**CIVIL ACTION NUMBER:**

19-md-02875-RBK

## CASE MANAGEMENT CONFERENCE VIA TELECONFERENCE

Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets  
Camden, New Jersey 08101  
January 5, 2022  
Commencing at 10:00 a.m.

10 | BEFORE

THE HONORABLE ROBERT B. KUGLER  
UNITED STATES DISTRICT JUDGE and  
THE HONORABLE THOMAS I. VANASKIE (Ret)  
SPECIAL MASTER

## 12 | APPEARANCES:

**13** MAZIE SLATER KATZ & FREEMAN, LLC  
BY: ADAM M. SLATER, ESQUIRE  
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**15** For the Plaintiffs

**16** KANNER & WHITELEY, LLC  
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New Orleans, Louisiana 70130  
**18** For the Plaintiffs

**19** GOLDENBERG LAW, LLC  
**20** BY: MARLENE J. GOLDENBERG, ESQUIRE  
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**21** For the Plaintiffs

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**25** Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

1 **A P P E A R A N C E S (Continued):**

2 LEVIN PAPANTONIO THOMAS MITCHELL RAFFERTY PROCTOR, P.A.  
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7 For the Defendants, Princeton Pharmaceuticals,  
Solco Healthcare U.S. LLC, and  
8 Zhejiang Huahai Pharmaceuticals Ltd.

9 GREENBERG TRAURIG LLP  
10 BY: VICTORIA DAVIS LOCKARD, ESQUIRE  
BY: STEVEN M. HARKINS, ESQUIRE  
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For the Defendants, Teva Pharmaceutical Industries Ltd.,  
12 Teva Pharmaceuticals USA, Inc., Actavis LLC,  
and Actavis Pharma, Inc.  
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1 (PROCEEDINGS held via teleconference before The Honorable  
2 Robert B. Kugler, United States District Judge, and The  
3 Honorable Thomas I. Vanaskie (Ret.), Special Master, at 10:00  
4 a.m.)

5 JUDGE VANASKIE: All right. Why don't we get started.  
6 Who will be speaking on behalf of the defendants  
7 today?

8 MR. GOLDBERG: Your Honor, this is Seth Goldberg, and  
9 as always, all of the defendants who need to speak will speak  
10 up when they need to. I will take the lead.

11 Happy New Year, Your Honor.

12 JUDGE VANASKIE: Happy New Year to you. Thanks,  
13 thanks, Mr. Goldberg.

14 Who will be the lead spokesperson for the plaintiffs?

15 MR. SLATER: Good morning, Your Honor, Adam Slater.  
16 Happy New Year. And we'll be the same. I'm sure that there  
17 will be a few different people speaking. For example, I know I  
18 will be addressing, unless there's something unanticipated,  
19 only one issue.

20 JUDGE VANASKIE: Very well. Happy New Year to you,  
21 Mr. Slater.

22 MR. SLATER: Thank you.

23 JUDGE VANASKIE: Please follow our protocol of muting  
24 your phones if you're not speaking. And please don't put us on  
25 hold because we will end up with some elevator music.

1           All right. This shouldn't be a very long call today.

2 Let's get right into it.

3           The first item I wanted to talk about deals with the  
4 length of the depositions of Conti and Quick. And who will be  
5 addressing this issue for -- and the question, as I understand  
6 it, is whether to accept briefs and make a decision in advance  
7 of the deposition, which I believe is scheduled for the 27th of  
8 January.

9           Who will be addressing this issue for the defendants?

10          MS. LOCKARD: Good morning, Your Honor. It's Victoria  
11 Lockard from Greenberg Traurig.

12          JUDGE VANASKIE: All right. Please proceed, Ms.  
13 Lockard.

14          MS. LOCKARD: Yes, so I don't think this should take  
15 much time, as you noted.

16          At the last case management conference on the 15th we  
17 addressed the issue and Your Honor stated to us that you would  
18 encourage us to go back, look at the actual plaintiffs' experts  
19 and determine, you know, if there are specific witnesses we  
20 need additional time for. We did that and we limited, you  
21 know, our needs to just two of the plaintiffs' slate of  
22 experts. And at the 12/15 conference you indicated that the  
23 defendants could file individual motions for any experts they  
24 felt they justified additional time for. And we intend to do  
25 that pursuant to the Court's instruction at the last

1 conference.

2 We tried to have a meet and confer with plaintiffs'  
3 counsel yesterday to see if we could resolve this issue without  
4 the need of Court intervention. They are maintaining the same  
5 position and will not agree to any additional time in advance  
6 of the deposition.

7 We then suggested maybe we could agree on an expedited  
8 briefing schedule so that we could present that to Your Honor,  
9 and we were told that plaintiffs didn't think briefing was  
10 necessary and they wouldn't agree.

11 So I think at this point we wanted to just alert the  
12 Court that we would be filing those two motions and try to get  
13 an agreement on a response period for plaintiffs that gives the  
14 Court sufficient time to address and rule on it before the  
15 27th, which is, in fact, Expert Quick, Mr. Quick's deposition  
16 date.

17 JUDGE VANASKIE: Thank you, Ms. Lockard.

18 Who will be addressing this issue for the plaintiffs?

19 MR. SLATER: I was assuming, Your Honor, that it would  
20 be Mr. Honik. I'm hoping he's on the line.

21 JUDGE VANASKIE: Mr. Honik?

22 (No response).

23 JUDGE VANASKIE: Apparently not.

24 MR. SLATER: Is somebody on the line for plaintiffs  
25 who's handling this issue who wants to address it? I mean, I

1 can if I have to but I thought other people were going to.

2 MS. WHITELEY: This is Conlee Whiteley. I can address  
3 it if Mr. Honik is not on the line.

4 JUDGE VANASKIE: All right. Ms. Whiteley, do you want  
5 to address it?

6 MS. WHITELEY: Yes. Thank you, Your Honor. Happy New  
7 Year.

8 We did participate in a meet and confer yesterday and  
9 I believe Ms. Lockard has stated our position accurately. And  
10 it's really a matter, you know, for the Court to determine  
11 whether briefing is needed or it could be decided today. And  
12 if briefing is needed, the proposed schedule that has been  
13 suggested by Ms. Lockard of staggering the briefs with five  
14 days and a five-page limit is fine with plaintiffs.

15 JUDGE VANASKIE: All right. Why don't we just get  
16 right to the issue and make the decision.

17 I think that it is appropriate, if you think it  
18 necessary, to file a motion and briefs. The schedule that was  
19 proposed by the defendants of a motion -- I would not take  
20 simultaneous letter briefs on this. I would want the normal  
21 process to be followed, and that is, the defense to file its  
22 motion by January 10 and the plaintiffs to file their response  
23 by January 14th, limited to five pages, and then we'll promptly  
24 make a decision.

25 I don't see a need to do more with it right now. I

1 would hope that you could have reached agreement on this but if  
2 you're unable to reach agreement, I think that's the fairest  
3 way to proceed.

4 MS. WHITELEY: Okay. Thank you, Your Honor.

5 JUDGE VANASKIE: All right. So we'll take the defense  
6 motion by January 10, limited to five pages; plaintiffs'  
7 response January 14th, limited to five pages; and we'll  
8 promptly decide the length, the duration of these depositions.  
9 And as I understand it, please correct me if I'm wrong on this,  
10 Ms. Lockard, the question is whether those depositions should  
11 be ten hours in length as opposed to seven hours.

12 MS. LOCKARD: Correct, Your Honor. That's what we  
13 intend to request in our motion.

14 JUDGE VANASKIE: Very well.

15 MS. LOCKARD: And we'll proceed as you've instructed.  
16 Thank you.

17 JUDGE VANASKIE: Thank you very much.

18 All right. The next issue deals with the decision of  
19 Judge Kugler on the Chinese state secret matter and the  
20 question to modify the order in terms of who can get access --  
21 who can be provided access to the documents covered by the  
22 Chinese state secret law. Plaintiffs are asking that the list  
23 of persons be extended to three or four attorneys who are  
24 outside the Executive Committee, as I understand it, plus a  
25 translator. And the question, as I understand it, is whether

1 this needs to be presented by way of a Motion for  
2 Reconsideration.

3 Do I understand the issue correctly from the defense  
4 perspective?

5 MR. GOLDBERG: Your Honor, this is Seth Goldberg on  
6 behalf of the ZHP parties.

7 When we learned that this was going to be a topic for  
8 the agenda, plaintiffs did not let us know what their request  
9 was going to be. I can tell you that, and we will talk with  
10 Judge Kugler about this, we don't have any objection to the  
11 request to have these three or four attorneys added. We'd  
12 obviously like to have their identities disclosed. You know,  
13 this is one of those things had we gotten a phone call from  
14 plaintiffs, we probably could have dealt with this without  
15 having to go to the Court on it. We're not expecting  
16 plaintiffs to move for reconsideration on this.

17 We would like to talk with Judge Kugler about the  
18 order but just wanted to preview for Your Honor that we don't  
19 have any objection to plaintiffs' request.

20 JUDGE VANASKIE: Okay. I think you're correct, Mr.  
21 Goldberg, that this is really an issue for Judge Kugler.

22 Do plaintiffs want to be heard before we move on with  
23 the call and move on to the next phase of the CMC?

24 MR. SLATER: No, Your Honor. This is Adam Slater. If  
25 you are deferring this issue to Judge Kugler, then there's

1 probably no need to give a preview of what we are going to say  
2 to him but I think you understand the issue.

3 JUDGE VANASKIE: Yes. And, again, I do think it is  
4 for Judge Kugler.

5 All right. Is there anything else we need to discuss  
6 at this time?

7 (No response).

8 JUDGE VANASKIE: All right. Shall we get Judge Kugler  
9 on the phone then?

10 MR. SLATER: From the plaintiffs, Your Honor, I think  
11 that makes sense. We have no other issues that I'm aware of.

12 MR. GOLDBERG: Same with defendants, Your Honor.

13 JUDGE VANASKIE: Loretta, if you are on the phone, it  
14 would expedite things if you gave me the number that I should  
15 use to call Judge Kugler. We may have lost Loretta.

16 All right. Let me get Judge Kugler on the phone. I'm  
17 going to hang up and then I will be rejoining you after I make  
18 contact with Judge Kugler. Thanks.

19 (Brief recess taken at 10:11 a.m.)

20 JUDGE KUGLER: Good morning. It's Judge Kugler.  
21 Happy New Year to all. Hope everyone is well.

22 MR. SLATER: Happy New Year, Judge.

23 MR. GOLDBERG: Happy New Year.

24 MS. LOCKARD: Same to you.

25 JUDGE KUGLER: So who do we have for a court reporter

1 today?

2 THE COURT REPORTER: Good morning, Judge. It's  
3 Camille. Happy New Year.

4 JUDGE KUGLER: Happy New Year, Camille. How are you?  
5 Everybody good?

6 THE COURT REPORTER: I'm well, thank you. Yes, thank  
7 you.

8 JUDGE KUGLER: Good. Well, so far my family has  
9 managed to avoid this latest iteration of the pandemic which I  
10 am grateful. So I hope all of you are well and your families  
11 are well.

12 Anyway, we have some things to talk about.

13 First, let me tell you, the courthouse is closed  
14 because of the pandemic at least through the end of January.  
15 If the numbers stay bad, I think this will extend through some  
16 period of time until we get through this latest pandemic  
17 problem. But anyway, that's where we are.

18 You have raised some issues. I know one of the issues  
19 you've raised is about the plaintiff wants or proposes to  
20 perhaps expand the parameters of the order as to who can see  
21 the documents. I know defense counsel notes his objection to  
22 that, which is fine. Go ahead.

23 MR. GOLDBERG: Your Honor, this is Seth Goldberg for  
24 ZHP.

25 We don't have an objection to this request as

1 mentioned before to Judge Vanaskie. It wasn't until we saw  
2 plaintiffs' papers that we understood the scope of their  
3 request; and, you know, provided we understand who the four  
4 attorneys are, we don't have a problem with their being added.

5 I would like to take an opportunity to get a little  
6 bit of guidance from Your Honor, if I can, on the opinion and  
7 order, on one aspect of it --

8 JUDGE KUGLER: Okay.

9 MR. GOLDBERG: -- which is that we are -- since the  
10 order was issued, there has been, as you can imagine, a lot of  
11 handwringing in China among ZHP and its Chinese counsel about  
12 how to comply with the order and also comply or at least not  
13 violate Chinese law and potentially have the criminal and  
14 monetary penalties. And I think, you know, we've got ZHP to  
15 the point where they want to comply with the Court's order and  
16 are really concerned about one aspect, which is the potential  
17 identification of the individual Chinese authorities that are  
18 identified in the documents at issue. And it's a grave concern  
19 for them that in producing these documents, those individuals,  
20 their names and titles, would potentially be disclosed, and ZHP  
21 having the permission to redact their names and titles I think  
22 would go a long way in getting these documents produced as soon  
23 as possible.

24 The order didn't explicitly permit that kind of  
25 redaction but we thought we'd get ahead of it and ask Your

1 Honor for that permission so that we can get ZHP I think what  
2 would be the final piece of comfort to get these documents  
3 produced. And it would just be limited to the names and titles  
4 of any Chinese government officials that are in the documents.

5 JUDGE KUGLER: Well, that's an interesting point. I  
6 guess we need to hear from the plaintiffs as to how they  
7 respond to that. My initial reaction is the names and titles  
8 wouldn't seem to be terribly important to the import of the  
9 document itself, but I'm not familiar with the documents and I  
10 guess the plaintiffs really aren't yet either.

11 So who wants to speak for the plaintiffs about this?

12 MR. SLATER: Good morning, Your Honor, it's Adam  
13 Slater. I'll address it.

14 I think in the first instance, since we don't know  
15 what's in the documents, if this is going to expedite getting  
16 these documents served and if that was the reconsideration  
17 issue that the defense was contemplating raising with the  
18 Court, I think maybe a reasonable compromise on it would be to  
19 consent to the redaction of the names, and then once we see the  
20 documents if we believe there's a need to know who was actually  
21 on the document from the Chinese government, we can confer with  
22 the defense and raise that issue and then we can see if there's  
23 a need to address it with the Court.

24 I think the titles would be different because that's  
25 just a title and would help us know, at least administratively,

1 not the person but at least the position that was involved so  
2 it gives us more context to what happened.

3 So perhaps that may be an agreeable compromise to the  
4 defense and we can avoid the reconsideration motion where we  
5 preserve our rights, once we see the documents, to see if there  
6 is some need for the names.

7 If someone on the plaintiffs' side wants to overrule  
8 me, I'm certainly not proud, but that's my initial take on it  
9 to try to move things along.

10 JUDGE KUGLER: The problem is going to be the title  
11 can identify the individual. It depends on the organization,  
12 the office, the group, whatever it is. I mean, it seems to be  
13 that the Chinese don't want even that possibility to exist.

14 On the other hand, if it's the Chinese equivalent of  
15 the FDA and it's some big organization and all you're revealing  
16 is it's someone from the Chinese equivalent to the FDA, I don't  
17 see that there might be a problem for the defendants in that;  
18 but if it's an individual, I can see an issue.

19 Perhaps you need to talk with each other and get more  
20 specific about it as to -- Mr. Goldberg, perhaps you can be  
21 more specific as to exactly what you want to have or what your  
22 client seeks to have limited and maybe you can work that out in  
23 the next week or so with the plaintiffs.

24 MR. GOLDBERG: Well, Your Honor, I appreciate that and  
25 I do think that we are being fairly specific. I think that the

1 names and the titles I do agree, Your Honor, that they would  
2 potentially ID the individual. Certainly, whatever  
3 communications or whatever identification about the agency at  
4 issue, that wouldn't be redacted. We're talking about the most  
5 minimal level of redactions.

6 This is truly a grave concern for ZHP. They've gone  
7 back to the Chinese authorities in light of the order. Their  
8 determination to produce the documents is really hinged on the  
9 very tight restrictions Your Honor has put on the dissemination  
10 of these documents and we were very happy to see in plaintiffs'  
11 submission yesterday their acknowledgment of the restrictions  
12 and that they intend to abide by them, and this is just really  
13 the one piece here. And, you know, if we are permitted to  
14 redact the names and titles in the first instance and if  
15 plaintiffs were to seek to have any of them unredacted, I think  
16 so long as they were held to the same exceptional cause  
17 standard that's in the order, that would be a reasonable  
18 approach so that we can get the documents produced. We are  
19 there. This is, I think, the piece that's holding us back in  
20 terms of the Motion for Reconsideration and we'd like to get  
21 beyond it. And, you know, we think that this is the reasonable  
22 way to do it.

23 JUDGE KUGLER: I agree. Let's proceed as Mr. Goldberg  
24 suggests. Release the documents with the redactions. If the  
25 plaintiffs have any issues with the redacted information, if

1 you can't work it out with Mr. Goldberg, then you can make your  
2 application to the court and we will go from there. Okay?

3 MR. SLATER: Thank you, Your Honor. Again, it's Adam  
4 Slater. Just one clarification.

5 We would hope that on the plaintiffs' side that if  
6 this becomes an issue, which we're not saying it will, but if  
7 it does, we would hope that the standard would not be  
8 determined at this point to be exceptional cause to find out  
9 either certainly a title or potentially a name, I'd just ask  
10 maybe if we could just hold the standard in abeyance pending  
11 going forward. And addressing the prior issue -- well, I'll  
12 leave it at that. I'll address the other issue separately.

13 JUDGE KUGLER: Why don't we just go ahead and release  
14 the documents and the plaintiffs and Mr. Goldberg can argue  
15 about any redactions. Again, if you can't resolve it, the  
16 Court will resolve it and we will figure it out from there.  
17 Okay?

18 MR. SLATER: Perfect.

19 Judge, as far as the other issue, I appreciate the  
20 defense saying they have no objection. Your order didn't  
21 provide for us to disclose who was going to have access. If  
22 Your Honor believes that's a reasonable quid pro quo, then  
23 we'll disclose once we make the decision, whatever Your Honor  
24 prefers that we do.

25 JUDGE KUGLER: Well, I think you ought to tell the

1 defense who it is specifically you propose to have access to  
2 these documents so they have an opportunity to object. I don't  
3 imagine they would but they should have the opportunity to  
4 object to individuals getting the documents. I don't think  
5 there is going to be an issue but tell them who it's going to  
6 be; and if you can't work that out, if it continues to be a  
7 problem, send a letter and we will take care of it. Okay?

8 MR. SLATER: Will do. And I don't anticipate any  
9 issues. Thank you, Judge. We appreciate you letting us do  
10 this in this expedited, more efficient way. Thank you very  
11 much.

12 JUDGE KUGLER: You're welcome.

13 We will get to the orders to show cause. Two have  
14 been resolve, Patrick and Harris. Leroy Patrick and Deborah  
15 Harris are resolved. So apparently we can dismiss those orders  
16 to show cause, correct?

17 MR. HARKINS: Good morning, Your Honor. This is Steve  
18 Harkins with the Teva defendants and Joint Defense Group.

19 That is correct. We also have one update. The Cahall  
20 case is similar to the Louissant matter where we've agreed now  
21 to not request dismissal at this time. So the only case  
22 remaining where we are requesting dismissal today is Chacon.

23 JUDGE KUGLER: The Louissant and the Cahall matter,  
24 are you asking that we relist it for an order to show cause for  
25 the next meeting or do you want to go forward with that?

1 MR. HARKINS: That's correct, Your Honor. For  
2 Louissant and Cahall we would ask that they be relisted for  
3 next month and the parties will work to resolve those issues  
4 ahead of time.

5 JUDGE KUGLER: Okay. We will relist them next month.

6 Now, that leaves Richard Chacon, C-H-A-C-O-N. Does  
7 anybody want to speak on behalf of Richard Chacon?

8 MR. NIGH: Your Honor, this is Daniel Nigh. That's my  
9 client. We don't have any cause at this time, so we understand  
10 it will be dismissed.

11 JUDGE KUGLER: Okay. The Chacon matter will be  
12 dismissed then.

13 All right. Any update on -- there's four defense are  
14 seeking an order to show cause on, Thorn, Mills, Byrnes and  
15 Maedler, M-A-E-D-L-E-R. Any updates on those, Mr. Harkins?

16 MR. HARKINS: No updates, Your Honor, and the  
17 defendants request that orders to show cause returnable at the  
18 next case management conference be entered in all four of these  
19 cases.

20 JUDGE KUGLER: Any objections from any plaintiffs?  
21 Any plaintiffs want to be heard on those four cases?

22 MS. GOLDENBERG: Your Honor, this is Marlene  
23 Goldenberg on behalf of the plaintiffs.

24 I have spoken with attorneys from Stark and Stark and  
25 my understanding is that they did submit a Plaintiff Fact Sheet

1 on William Byrnes. So if Mr. Harkins can confirm that he's  
2 received it, I don't think that should be on the list anymore.

3 JUDGE KUGLER: Any information on that, Mr. Harkins?

4 MR. HARKINS: I did not receive an update on that, but  
5 I can certainly try and check right now. I am not aware of  
6 that being filed. If it is, we would obviously take it off and  
7 renew the show-cause process next month, assuming that has been  
8 filed. As I sit here, I apologize, I am not aware of it.

9 JUDGE KUGLER: For the time being we would list that  
10 for a potential order to show cause at the next meeting, and we  
11 can always take it off if he did get the fact sheet. Okay?

12 Now we have 18 you want to relist, is that correct,  
13 Mr. Harkins? Any updates on those 18?

14 MR. HARKINS: Your Honor, there's one update. Case  
15 Number 7, Thomas Parker, that has been resolved and we will no  
16 longer be listing that for next month's conference.

17 JUDGE KUGLER: So that leaves Walter Billingy,  
18 B-I-L-L-I-N-G-Y; Montevaldo, M-O-N-T-E-V-A-L-D-O; Joyce Murphy  
19 on behalf of the Estate of James Murphy; Cook, C-O-O-K; Scott;  
20 Whitfield; McCall, M-C-C-A-L-L; Harris; Brooks; Raymond;  
21 Sanders; Stewart, with a W; Anderson; Tolley, T-O-L-L-E-Y;  
22 Peyton, P-E-Y-T-O-N; Donna King and the Estate of Bernard King;  
23 Ernestine Williams. They will all be listed again for the next  
24 meeting.

25 All right. A couple other things I want to tell you

1 about today.

2 We expect the final papers on the *Daubert* motions to  
3 be filed this week. Let me just give you an update as to where  
4 we are going to go with that.

5 Any *Daubert* hearings we need will take place in late  
6 February, early March, that timeframe. We will talk more about  
7 this at our next meeting the end of the month.

8 Don't bother on the qualifications issue in *Daubert*.  
9 I have seen their resumés. All these experts meet the minimum  
10 standards under *Daubert* for qualifications, so we don't want to  
11 waste time with that.

12 The format is going to be a little different on any  
13 *Daubert* hearings we have. We have spoken briefly in the past  
14 about this. A *Daubert* hearing is not the opportunity for the  
15 proponent of the report of the expert to offer what is, in  
16 essence, trial testimony. That's not what we are doing in a  
17 *Daubert* hearing. The format is going to be different than  
18 you're probably used to if you have done *Daubert* hearings.  
19 Again, we are not going to begin on the qualifications. It  
20 looks like it's all methodology-type attacks.

21 The direct testimony of the expert on behalf of the  
22 proponent of the expert will take the form of an affidavit or  
23 declaration, it will be a writing submitted. So the only  
24 testimony I am going to hear is going to be what would be the  
25 cross-examination by the opponent of the expert, the person

1 bringing the motions, where they have the opportunity to  
2 cross-examine the writings of the experts.

3 These will all be done by Zoom because, again, the  
4 courthouse is closed and I don't -- I'm not confident we are  
5 going to get reopened in time to actually do this in the  
6 courtroom. So we will do this by Zoom.

7 Again, we will discuss this in more detail at our next  
8 meeting as to who and when exactly this is going to be; but I  
9 just wanted to give you the general timeframe, late February,  
10 early March, to do whatever *Daubert* hearings are going to be  
11 necessary in the case.

12 All right. One last thing I want to talk to you about  
13 on my agenda. If you have other things, we will talk about  
14 them. I have read your letters I asked for on separate  
15 settlement counsel, I appreciate you having submitted those,  
16 but I have decided that we are going to have separate  
17 settlement counsel for the parties in this case. The  
18 authority, and that question's been raised by some of the  
19 attorneys in the case, the authority I think is in Rule 16,  
20 28 U.S.C. § 652. If you look at our rule, Local Rule 16.1, it  
21 permits the use of special procedures. And Rule 16 in the  
22 Federal Rule provides that special procedures are provided for  
23 in Local Rules. The Plans, Re: In the District of New Jersey,  
24 at the Local Rule 301.1 and the Plan in Appendix Q, which  
25 essentially governs our mediation efforts and delegates to the

1 mediators the authority to control and regulate the mediation  
2 process, including determining and designating the appropriate  
3 representatives of the parties. So we do have the statutory on  
4 Rule 30 to do this. It's been increasingly used across the  
5 nation in these MDL cases.

6 So I am going to require separate settlement counsel.  
7 On the defense side there will be separate settlement counsel  
8 unaffiliated with the litigation firms on one or more of each  
9 tier of the defendants.

10 Plaintiffs are a little more complicated. Normally  
11 the plaintiffs are looking for an overall agreement with the  
12 settlement but you have three different classes of plaintiffs  
13 here. I don't want to get in a situation where they're  
14 fighting among themselves as to, if there is or if you are able  
15 to come up with some kind of a settlement agreement with some  
16 fund of money out there, I don't want to see a situation where  
17 each of the groups of the plaintiffs are saying, well, I need  
18 more than you get, those kinds of things. But for the time  
19 being I think we will be satisfied with a separate settlement  
20 firm for the plaintiffs collectively.

21 Now, who's it going to be is the question that you  
22 have. What I am going to do is I am going to give you another  
23 four weeks, each side, to suggest to the Court the names of the  
24 firms you and your clients would like to use as your settlement  
25 counsel. So I want that in writing from you, an opportunity to

1       vet these settlement counsel, and then we will decide at the  
2 end of that period who they are going to be. And that will  
3 coincide probably, hopefully, with the ramping up for the  
4 *Daubert* hearings, whatever *Daubert* hearings we need.

5           Having made this decision, I want to reiterate to all  
6 of you that I am in no way trying to coerce you and your  
7 clients to settle the case. There are several good roles in  
8 the case. If you and your clients determine in their best  
9 interest not to settle the case, that's fine. There will be no  
10 repercussions if you decide that that's not what you want to  
11 do. But I think it's worth a shot. I think it works best with  
12 separate counsel who are not involved in the litigation. I  
13 appreciate Mr. Goldberg's suggestion that it be people from the  
14 existing firms, but I don't see how that saves you any money  
15 because whoever it is has to be brought up to speed even if  
16 they are in the same firm. I want them to be completely  
17 unaffiliated with those of you who are actually in the trenches  
18 doing all the hard work here.

19           So that's where we will go from that. We will talk  
20 more about that at our next meeting.

21           All right. Anything else you'd like to raise?

22           MR. SLATER: Nothing for plaintiffs, Your Honor, at  
23 this time.

24           MR. GOLDBERG: Nothing from defense.

25           JUDGE KUGLER: Defense counsel?

1           All right. Thank you everybody. Stay well, stay safe  
2 and we will talk to you at the end of the month. Okay?

3           MR. SLATER: Thank you, Your Honor. Be safe.

4           MR. GOLDBERG: Thank you, Your Honor.

5           (The proceedings concluded at 10:39 a.m.)  
6           - - - - -  
7

8           I certify that the foregoing is a correct transcript  
9 from the record of proceedings in the above-entitled matter.

10  
11           /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR  
12           Court Reporter/Transcriber

13           January 5, 2022  
14           Date

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